Australian War Memorial Amendment Bill 2014

Tyler Fox
Law and Bills Digest Section

Contents

The Bills Digest at a glance ........................................ 2
Purpose of the Bill ...................................................... 2
Background .................................................................. 2
   Coalition policy .......................................................... 2
   Memorial policy .......................................................... 2
   Effect of paid parking in the Parliamentary Triangle .......... 2
   Announcement of paid parking .................................... 2
Committee consideration ........................................ 3
Policy position of non-government parties/independents .... 3
Position of major interest groups .................................. 3
Financial implications ................................................. 3
   Special appropriations ............................................... 3
Statement of Compatibility with Human Rights ............... 3
Key issues and provisions .......................................... 3
Consequences of the Bill ........................................... 4
   Effect on the Memorial ............................................... 4
   Fringe Benefits Tax ................................................... 4
Concluding comments ............................................. 4

Date introduced: 30 October 2014
House: House of Representatives
Portfolio: Veterans’ Affairs
Commencement: On the day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website.
The Bills Digest at a glance
The introduction of the Australian War Memorial Amendment Bill 2014 (the Bill) is to fulfil an election promise to prevent the Australian War Memorial (Memorial) charging entry or parking fees.

This could have a flow-on effect of persons not visiting the Memorial, such as nearby workers, taking advantage of the free parking.

It also has fringe benefits tax (FBT) implications.

Purpose of the Bill
The Government has introduced the Bill to fulfil an election promise to prevent the Memorial charging entry or parking fees at its Campbell site in the Australian Capital Territory.

Background

Coalition policy
The Coalition made a promise that, if elected, it would pass legislation to ensure no entry or parking fees could be imposed by the Memorial. \(^2\) The Coalition has announced that it will also review the Australian War Memorial Act 1980 (Cth) to see if it meets the current needs of the Memorial and the community. \(^2\)

Memorial policy
Dr Brendan Nelson, Director of the Memorial, stated that it is the Memorial’s policy to have free parking for patrons and staff. \(^3\)

Effect of paid parking in the Parliamentary Triangle

Announcement of paid parking
The 2013–14 Budget stated that paid parking would be imposed on car parks in the Parliamentary Triangle (Triangle) that are owned by the Australian Government. \(^4\) The National Capital Authority (NCA) implemented paid parking in the Triangle of the precincts of Barton, Russell, Acton and Parkes, excluding those directly controlled by independent bodies like the Memorial. \(^5\) This took effect on 1 October 2014. \(^6\)

The Joint Standing Committee on the National Capital and External Territories (Joint Committee) has rejected the introduction of paid parking in previous inquiries in 1999 and 2003 in the Triangle because, for example, it would not address the lack of services in the area and may financially disadvantage institutions. \(^7\) An Intergovernmental Committee on Parking in 2009–10 recommended that new parking structures be built or that pay parking or a permit scheme (which would be supported by public transport or carpooling), or a combination of both, be introduced to allay traffic problems in the Triangle. \(^8\) In its 2013 inquiry, the Joint Committee stated:

The plan is to provide a predominance of short stay parking in the vicinity of national institutions for the use of visitors, and long stay parking in the vicinity of government offices for the use of workers. Hours of operation will be 8 am to 6 pm, Monday to Friday (excluding public holidays). The initial price proposed is $11 per day for long stay

---

1. M Ronaldson (Minister for Veterans’ Affairs), *The Government’s commitment to the Australian War Memorial*, media release, 28 August 2014; T Abbott (Leader of the Opposition) and M Ronaldson (Shadow Minister for Veterans’ Affairs), *The Coalition’s policy for veterans*, joint media release, 2 September 2013; T Abbott (Leader of the Opposition), M Ronaldson (Shadow Minister for Veterans’ Affairs) and G Humphries, *Restoring proper funding to the Australian War Memorial*, joint media release, 22 February 2011, accessed 3 November 2014.
2. T Abbott (Leader of the Opposition) and M Ronaldson (Shadow Minister for Veterans’ Affairs), *The Coalition’s policy for veterans*, joint media release, op. cit.
8. Ibid., pp. 6–7.
parking and $2 per hour for short stay parking. Rates will follow market prices and will be reviewed biannually. Some on-street parking will be available for up to one hour free of charge.  

The NCA is responsible for administering the pay parking on the National Land in this area and collecting the revenue, which will be deposited into the Consolidated Revenue Fund. This means that the revenue generated may not necessarily be spent on activities on the National Land.

**Committee consideration**

The Selection of Bills Committee has deferred consideration of the Bill to its next meeting.  

**Policy position of non-government parties/independents**

No policy position on the Bill has been announced by Labor, other non-government parties or the independents.

**Position of major interest groups**

The Memorial’s view on the Bill is discussed above in the Background to the Bill.

**Financial implications**

The Bill has no financial impact.

**Special appropriations**

The Bill does not require a special appropriation.

**Statement of Compatibility with Human Rights**

The Statement of Compatibility with Human Rights can be found at page 3 of the Explanatory Memorandum to the Bill. As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

**Key issues and provisions**

**Item 1** amends section 6 the *Australian War Memorial Act 1980* (Cth) to prevent the Memorial from levying charges on parking and entry to land or buildings it owns or controls that are located in Campbell, Australian Capital Territory. This does not apply to hiring or leasing of any such land or building, the Memorial’s provision of educational programs and any other services that follow entry onto such land or into any such building.

**Item 2** amends the Governor-General’s power under section 42 to make regulations. Currently, it includes provisions giving the Memorial power to levy charges for entry onto any land, or into any building, owned by, or under the control of, the Memorial. The amendment limits this power so that it does not apply to any of the Memorial’s land or buildings in Campbell, Australian Capital Territory.

The Australian War Memorial Regulations 1983 (Cth) currently provide for an entry charge to the exhibition areas of the Treloar Centre located in Mitchell, Australian Capital Territory. This does not apply to certain former and current members of the Defence Force. The Bill would not affect this arrangement.

---

9. Ibid., p. 3.
14. Ibid., regulation 8A.
15. Ibid., regulation 8A.
Consequences of the Bill

The Bill will help prevent the Memorial from charging entry and parking fees to those who visit it, which is its intended effect. However, the Bill also prevents fees being charged for those working at the Memorial and for those who use the Memorial’s parking facilities but do not attend the Memorial itself. It may also have FBT consequences for the Memorial.

Effect on the Memorial

The Memorial is one of the few areas within the Parliamentary Triangle where paid parking has not been implemented by the NCA. This has created an incentive for people not visiting or working at the Memorial to use the Memorial’s parking.

The Memorial has had to put in place something to stop such people parking on its premises. For example, Dr Brendan Nelson, the Director of the Memorial, has introduced four-hour parking limits and associated signage between 7:30am and 6:00pm Monday to Friday (excluding public holidays); there would be allowances for staff, volunteers, researchers and long-term visitors. Since beginning on 1 July 2014, this strategy against those taking advantage of free parking relies on ‘moral persuasion’. To be clear, a fine would not be imposed under this scheme.

Fringe Benefits Tax

The Memorial is not exempt from paying FBT. The Memorial’s provision of free parking to employees may be subject to FBT if it meets certain criteria. These include that commercial car parking stations that charge an all-day parking fee (which is over the car parking threshold) are available within a one kilometre radius of the Memorial site located at Campbell. The Memorial, as at 30 June 2014, has 357 total staff (excluding its Statutory Officer).

Unlike income tax, FBT is levied on the employer. However, it is common for employers to require employees, by contract, to bear the liability as a condition of receiving a benefit. There is a question whether such an impost would amount to fee for parking, contrary to the Bill. Were that so, the Memorial may have to bear the burden of the FBT.

Concluding comments

There is a question whether the Bill is needed at all given that the Director of the Memorial has stated it is Memorial policy to have no parking fees. Nonetheless the Bill does serve the purpose of impeding changes in that policy in the future and of meeting an express election commitment.

The Bill seeks to make access to the Memorial free and for all as it is now. The Bill affects the Memorial’s ability to have effective control of its parking arrangements to ensure those working at or at least attending the Memorial in order to exclude those that are taking advantage of free parking available at the site. It leaves the Memorial in a position that it is unable to deter, by way of fees, the use of its parking areas by those not working at or visiting the Memorial. That may require other measures which may come at a cost. The possibility of FBT

---


being payable and not being recoverable from employees is important to the financial viability of the Memorial’s operations.